

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

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DEC 3 - 1990

Federal Communications Commission
Office of the Secretary

In re Application of

VALLEY PUBLIC TELEVISION, INC.

For Construction Permit for a New
Television Station on Channel *39
in Bakersfield, California

File No. BPET-900904KF

REC'D MASS MEDIA BUR

DEC 5 1990

VIDEO SERVICES

To: Chief, Mass Media Bureau

**OPPOSITION TO
PETITION FOR LEAVE TO AMEND**

Community Television of Southern California ("CTSC"),¹
hereby opposes the Petition for Leave to Amend ("Petition")
filed on November 14, 1990, by Valley Public Television, Inc.
("VPT") in the above-captioned proceeding. VPT's attempt to
cure the flaws in its application is untimely, and it has
failed to make the showing required for acceptance of its
Amendment. Accordingly, its Petition must be denied.²

1 CTSC is an applicant for a construction permit for a new noncommercial educational television station to operate on Channel *39 in Bakersfield which is mutually exclusive with VPT's application. Accordingly, CTSC has standing to file this Opposition.

2 On the same day VPT filed its Petition for Leave, it also submitted a Request for a Waiver of Section 73.610 of the Commission's rules to permit it to operate from its proposed antenna site which is short-spaced to the allotment for Channel *25 in Ridgecrest, California. Simultaneously herewith, CTSC is submitting an Opposition to that Request.

Introduction

VPT's application was filed on September 4, 1990, in response to the cut-off notice established for CTSC's mutually exclusive application.³ VPT's application did not contain an allocation study demonstrating that its proposal conformed to the Commission's technical regulations, and VPT apparently did not conduct such a study since its proposed antenna site is 9.8 kilometers short-spaced to the reference point for Channel *25 in Ridgecrest, California. VPT's application was thus incon-

rules. VPT's effort to cure the fundamental defect in its initial application is as flawed as that application.

**VPT's Petition for Leave Does Not Demonstrate
Good Cause for Acceptance of Its Amendment**

As VPT notes in its Petition, an applicant seeking to amend its application subsequent to the "B" cut-off date must satisfy the six-part test for "good cause" enunciated in Erwin O'Conner Broadcasting Co., 22 F.C.C. 2d 140, 143 (Rev. Bd. 1970). Under that test, the applicant must show (1) that it exercised due diligence in filing the amendment; (2) that the need to amend was involuntary; (3) that acceptance of the amendment will not require any modification or addition of parties or issues; (4) that the amendment will not disrupt the hearing or create the need for an additional hearing; (5) that no unfair prejudice will result to other parties; and (6) that the applicant will not gain a competitive advantage as a result of the amendment. VPT's Petition does not satisfy the first, second or third elements of this test.⁴

⁴ In addition to violating these three elements, permitting VPT to amend its application at this time, after the "B" cut-off date, will unfairly prejudice CPSC's interests to the

First, VPT claims to have exercised due diligence since it allegedly "did not know a short-spacing question existed when it filed its application," and it filed a request for waiver "as soon as [VPT] became aware of the need to do so." Petition at 1. However, as noted above, VPT did not engineer its application properly in the first instance since it failed to conduct an allocation study. Thus, the sole reason it "did not know" of the short-spacing was its own lack of good engineering practice. Such shoddy engineering cannot serve as the basis for a finding that VPT acted with "due diligence" by filing a curative amendment in a reasonably prompt manner after being advised of the defect.⁵

4(...continued)
mutually exclusive applications and commence the hearing process. Allowing parties to cure basic defects in their applications after that date undermines that purpose, imposes added burdens on the Commission, and prejudices the interests of applicants who have acted diligently and cautiously. While CTSC recognizes that the Commission has held that an applicant does not have "a vested interest in the disqualification of a competing applicant," Azalea Corp., 31 F.C.C.2d 561, 563 (1971), that decision does not require the Commission to give VPT any unearned advantage by allowing it to amend at this point in the process. Granting leave to an applicant which has disregarded the Commission's rules and good engineering practices, as has VPT, will only encourage such conduct by others, delay the introduction of service, and clog the Commission's processes. Cf. Kenter Broadcasting Co., 62 R.R.2d 1573, 1578 (1986).

5 See Dutchess Communications Corp., 101 FCC 2d 243, 255-56 (Rev. Bd. 1985) (An application's "glaring deficiencies result, at best, from . . . wilful myopia or, at worst, hapless legerdemain. Either way, [the applicant's conduct] should not be condoned or rewarded by further consideration of its application.")

applicant is, or should have been, apprised of the problem requiring amendment." Cuban-American Limited, 2 FCC Rcd 3264, 3266 (1987)(emphasis added). Notwithstanding its claims that it did not know of the short-spacing problem prior to the filing of CTSC's Petition, the record suggests strongly that VPT actually knew, or at least should have known, of the problem long before it filed its application. Thus, on page 3 of its Opposition to CTSC's Petition to Deny in this proceeding, VPT attempted to explain its failure to request a short-spacing waiver by arguing that it was "unclear" whether Channel *25 or Channel *41 would be allocated to Ridgecrest, citing MM Docket No. 85-390. That contention indicates that VPT was familiar with the Ridgecrest allotment prior to filing its application and therefore should have been aware of the short-spacing problem.

Further, VPT's counsel was aware of the Ridgecrest allotment since, on January 4, 1988, he filed a Petition for Reconsideration on behalf of Pappas Telecasting of the Commission's action in MM Docket No. 85-390. the proceeding

casting Corp., 49 R.R.2d 1497 (1981) (ALJ) (six month delay is not due diligence).

Second, VPT does not even attempt to meet the "involuntariness" test, and it cannot. Indeed, the Review Board has

stated that an "applicant's failure to move is decisive in

trary to the third element of the Erwin O'Conner Broadcasting Co. test.⁶

**VPT's Public Interest Factors
Do Not Justify Grant of Its Petition**

In apparent recognition of its failure to satisfy the test in Erwin O'Conner Broadcasting Co., supra, VPT argues that two "public interest" factors justify acceptance of its amendment. Petition at 2. Those factors are no more persuasive than VPT's showing under Erwin O'Conner Broadcasting Co. The first alleged public interest factor is that VPT will provide non-commercial service to residents of the Bakersfield area. That consideration is hardly a sufficient reason to grant it leave to amend since CTSC proposes to serve those same residents.

VPT's second alleged benefit is that its amendment should be accepted to permit the Commission to make a comparative determination of which applicant will best serve Bakersfield. Petition at 2. While the Commission has cited that consideration as a factor in deciding whether to accept an untimely amendment, it has also made it clear that it is merely one factor which it weighs in deciding whether to

⁶ Even if the Commission does not designate an issue whether the public interest will be served by grant of VPT's waiver request, it must consider that issue in connection with VPT's Request for a Waiver. Thus, acceptance of the amendment inevitably adds an issue to this proceeding, contrary to the limitations of the third element of the Erwin O'Conner Broadcasting Co. test.

allow an untimely amendment to be filed. That factor does not, by itself, establish good cause. Royce Intern. Broadcasting Co. v. FCC, 820 F.2d 1332, 1337-38 (D.C. Cir. 1987), citing Belo Broadcasting Corp., 68 FCC 2d 1313, 1322 (1978) and Shoblom Broadcasting, 93 FCC 2d at 1030. Yet, the strength of VPT's Petition rests largely on that single consideration since its other claims are without merit.

Moreover, it is clear that whatever value might exist in giving the Commission a choice between applicants here, it is not a sufficient basis to support a grant of VPT's Petition. VPT's wilful failure to conduct essential engineering studies prior to filing its application, its failure to demonstrate that it acted with due diligence or that the need to file the amendment was due to factors beyond its knowledge or control, and the fact that grant of its Petition will result in the addition of issues in the hearing manifestly outweigh whatever value might be attributed to giving the Commission the opportunity to evaluate the competing applications of CTSC and VPT. See Dutchess Communications, 101 F.C.C.2d at 255-56.⁷

⁷ In addition, as demonstrated in the Opposition to VPT's Request for Waiver, filed simultaneously herewith, VPT has not advanced any persuasive public interest consideration that would justify grant of its waiver request. Consequently, there are no other public interest factors which might warrant grant of this Petition.

Conclusion

For the reasons set forth above, CTSC urges the Commission to deny VPT's Petition for Leave to Amend. VPT has failed to demonstrate good cause for its untimely amendment and denial of the Petition and dismissal of its application will assure prompt commencement of over-the-air public television service in Bakersfield.

Respectfully submitted,


/s/ Theodore D. Frank
Theodore D. Frank


/s/ Paul Feldman
Paul Feldman

Arent, Fox, Kintner, Plotkin
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Of Counsel:

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In re Application of

VALLEY PUBLIC TELEVISION, INC.

For Construction Permit for a New
Television Station on Channel *39
in Bakersfield, California

File No. BPET-900904KF

To: The Commission

**OPPOSITION TO
REQUEST FOR WAIVER**

Community Television of Southern California ("CTSC")¹ hereby opposes Valley Public Television, Inc.'s ("VPT") Request for a Waiver of Section 73.610 of the Commission's rules ("Waiver Request"). VPT seeks a waiver of that rule so that it may locate the antenna for its proposed station at a site which is short-spaced to the allotment for Channel *25 in Ridgecrest, California. VPT has failed to bear the heavy burden required of those seeking a waiver of the Commission's rules, and has not demonstrated that the public interest will be served by grant of its waiver request. Accordingly, its Waiver Request must be denied.²

¹ CTSC is an applicant for a construction permit for a new noncommercial educational television station to operate on Channel *39 in Bakersfield which is mutually exclusive with the application of VPT. Accordingly, CTSC has standing to file this Opposition.

**I. VPT Has Not Established That Grant of Its
Waiver Request Will Serve the Public Interest**

It is well established that applicant's requesting a waiver of the Commission's rules have a heavy burden to demonstrate that grant of the waiver request will serve the public interest. WAIT Radio v. FCC, 459 F.2d 1203,1207 (D.C. Cir.), cert. den'd 409 U.S. 1027 (1972). This requirement applies to applicants seeking short-spacing waivers, See North Texas Media, Inc. v. FCC, 778 F.2d 28 (D.C. Cir. 1985), and the Commission has stated that it "does not favorably regard proposals for authorizations in derogation of the mileage separation requirements of the rules except where a most pressing urgency has been demonstrated (citation omitted)" Mid-New York Broadcasting Corp., 3 F.C.C.2d 529,532 (1966)(TV short-spacing waiver request denied). As shown below, VPT has failed to meet this burden. It has not made the required threshold showing that fully-spaced sites are unavailable, and has failed to set forth any other public interest factors that might justify the grant of its Waiver Request.

**A. VPT has not shown that fully-spaced
sites are unavailable**

It is now well established that applicants seeking a waiver of the minimum spacing rules must, as an initial matter, demonstrate that alternative fully-spaced sites are not avail-

2(...continued)
eously herewith, CTSC is submitting an Opposition to that
Petition for Leave to Amend.

able. Orange Park Florida TV Inc. v. FCC, 811 F.2d 664, 669 (D.C. Cir. 1987), citing Townsend Broadcasting Corp., 62 F.C.C.2d 511,512 (1976); North Texas Media, Inc. v. FCC, supra. As the Commission stated in Townsend Broadcasting Corp., supra at 512, the showing that fully-spaced sites are unavailable must be based on "concrete support, preferably documentary, that suitable, non-short-spaced spaced sites are unavailable." VPT has failed to make that showing here, and, it cannot. CTSC's proposal demonstrates that such fully-spaced sites are in fact available. On this basis alone, VPT's waiver request must be denied. See Nelson County Broadcasting Co., 64 F.C.C.2d 932 (1977); Townsend Broadcasting Corp., supra; Trend Broadcasting, Inc., 18 F.C.C.2d 749 (1969).

Perhaps in recognition of this problem, VPT claims that, although there are fully spaced sites available, those sites are "inferior" to its short-spaced site. Waiver Request at 3. However, VPT does not offer any explanation as to why the alternative sites are inferior, and its bare, unsupported assertion can not relieve it of the obligation to meet this established threshold showing. Townsend Broadcasting Corp., supra.³

3 VPT also argues that the Commission should take into account its goal of fostering the growth of noncommercial services in evaluating VPT's admission that fully spaced sites are available. Waiver Request at 3. This argument is mystifying: CTSC also proposes a non-commercial service, yet managed to find a fully spaced site that serves Bakersfield and its surrounding area. Furthermore, VPT has provided no precedent or policy explaining why the mileage separation rules, which
(continued...)

Further, the cases on which VPT relies to justify the grant of its waiver request do not support its request. None of those cases involved comparative proceedings in which one of the applicants had proposed a full-spaced site. See Donovan Burke, 104 F.C.C.2d 843 (1986). Moreover, those cases are distinguishable on other grounds; in each there were substantial other public interest benefits which supported grant of the waiver. For example, while the Commission granted a waiver in Caloosa Television Corp., 3 FCC Rcd 3656 (1988), even though the applicant did not show that there were no fully-spaced sites available, it did so only "because of the unusual combination of public interest factors present" in that case. Id. at 3657. Those factors included (a) that the proposed site would provide additional service to more than 60,000 people and a provide a first off-the-air ABC network service to more than 34,000 people, id. at 3658, (b) that the choice of sites was "severely limited by the proximity of the Gulf of Mexico and extensive swamp areas." id., and (c) that, while the amount of short-spacing was "not minimal," (11.5 out of the required 329 kilometers or 3.5%), it was nevertheless within the range of previous waivers. Id.⁴

3(...continued)
are designed to maximize the quality of broadcast service,
should be less applicable to noncommercial service in situa-
tions such as these.

4 The Commission also made it clear in its reconsidera-
tion decision that Caloosa was a unique case and that appli-
cants seeking short-spacing waivers were still required to
(continued...)

None of those factors are present here. First, while VPT claims that its proposal will provide non-commercial service to 88,707 more people than CTSC's proposal, Waiver Request at 3, that claim rests on an erroneous comparison. As the attached Statement of Robert Hammett attests, VPT's claim that it will serve more people results from VPT's use of data obtained from the Kern County Board of Trade and Economic Development, while CTSC used the official 1980 Census Data as required by the Commission. See Statement of Robert L. Hammett ("Hammett Statement") at p. 1. When using the same data, the difference in the population served by CTSC and by VPT is minuscule: some 6,390 more people out of more than 330,000, less than 2%.⁵

Secondly, VPT has not made any comparable showing that the available sites are constrained by geographic limitations, and it can not. There are adequate sites available which will permit it to serve Bakersfield fully. Lastly, VPT's proposed short-spacing (9.8 out of the required 95 kilometers or 10.24%)

4(...continued)
demonstrate that there were no fully spaced sites available. Thus, it stated that it was

reaffirm[ing] [its] intent generally to require applicants proposing short-spaced sites to make a threshold showing that suitable fully spaced or less short-spaced sites are unavailable.

Caloosa Television Corp., 4 FCC Rcd 4762 (1989).

5 As Mr. Hammett also notes, updated Census Data indicates that the relative difference in the population served by the two applicants remains unchanged. Hammett Statement at p. 1.

is not only substantially greater than that in Caloosa, it is greater than those cited in that case by the Commission as defining the acceptable range.⁶

The other cases cited by VPT are similarly inapposite. Thus, in Pappas Telecasting, Inc., 49 R.R.2d 1688 (1981), the Commission granted the short-spacing waiver request because the proposed short-spacing was de minimis: 2.4 miles out of the required 175, i.e., 1.4% of the required separation and the short-spaced site would permit Pappas to serve some 54,000 additional people. Id. at 1689. Similarly, in The Outlet Co., 12 R.R.2d 387 (1968), the applicant demonstrated that the FAA had disapproved of other possible sites and that there were no other fully-spaced sites available which could improve service, id. at 389,⁷ while in KXO, Inc., 6 R.R.2d 834 (1966), the applicant showed that its proposal would provide a gain in service to 23,365 people, id. at 835, and that, because of constraints imposed by other allotments and physical characteris-

6 For example, the Commission cited Midcontinent Broadcasting Co., 45 F.C.C. 1798 (1964), where a shortfall of 14.2 miles out of the required 190 (7.4%) was approved. 3 FCC Rcd at 3658.

7 Furthermore, the applicant in that proceeding proposed to use a directional antenna that would provide "equivalent protection" to a co-channel station. Id. at 391. However, Commission policy no longer allows use of "equivalent protection" theories in UHF licensing, and accordingly Outlet is no longer persuasive authority in this context. See Caloosa Television Corp., supra, 3 FCC Rcd at 3659, note 1, citing New Jersey Public Broadcasting Authority, 50 RR 2d 251 (1981). See also Pappas Telecasting, Inc., supra, 49 RR 2d at 1689.

tics of the area. the short-spaced site was the only feasible

The second and third "factors" are irrelevant in this case as it involves applicants for new stations, not changes in facilities, and there are no environmental issues here. VPT makes much of the last factor, claiming that its proposed site will permit it to provide better service to Bakersfield than is

The second and third "factors" are irrelevant in this case as it involves applicants for new stations, not changes in facilities, and there are no environmental issues here. VPT makes much of the last factor, claiming that its proposed site ~~will permit it to provide better service to Bakersfield than is~~

also claims that the height of the site will permit it to provide a better signal to Bakersfield.

The claims are specious. As shown in the Hammett Statement, both VPT's and CTSC's proposed sites are located to the east of Bakersfield and both have several television towers situated at the same site. Thus, VPT's site is not any more of an antenna farm or more desirable from antenna orientation perspective than CTSC's. In fact, as Hammett's Statement demonstrates, the strength of VPT's signal in Bakersfield is actually inferior to that provided by CTSC. Hammett Statement at p. 2. In addition, VPT's claim that its proposed site will permit it to serve a greater population is a gross exaggeration. VPT's proposed station will serve at best 1.9% more people than CTSC's fully-spaced proposal.

Finally, VPT relies on Azalea Corp., 31 F.C.C.2d 561 (1971), and Anax Broadcasting, 87 F.C.C.2d 483 (1981), for the proposition that its waiver should be granted so that the Commission can consider its application comparatively with CTSC's. Waiver Request at 6-7. However, those two cases are irrelevant since they deal with the issue of whether the Commission should allow untimely amendments -- not whether it should grant waiver requests.¹¹

¹¹ However, even if the Commission were, for the first time, to conclude that having the opportunity to consider competing applicants was relevant to a waiver request, it would not support the grant of VPT's request. As is the case with respect to untimely amendments, that factor can not, standing alone, establish that the public interest would be served by
(continued...)

CONCLUSION


VPT has failed to make the required threshold showing that fully spaced sites are unavailable. In addition, it has failed establish other public interest factors justifying its Waiver Request. Accordingly, CTSC urges the Commission to deny VPT's Waiver Request.

Respectfully submitted,


/s/ Theodore D. Frank
Theodore D. Frank

Of Counsel:

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11(...continued)
grant of the waiver. Cf. Royce Intern. Broadcasting Co. v. FCC, 820 F.2d 1332, 1337-38 (D.C. Cir. 1987), citing Belo Broadcasting Corp., 68 F.C.C.2d 1313,1322 (1978); Shoblom Broadcasting, 93 F.C.C.2d 1027, 1030 (1983). Indeed, if it was sufficient to justify grant of a waiver, the Commission's rules would effectively be rendered meaningless in any comparative situation.

Consequently, the value of giving the Commission a choice among competing applicants must be one among many that must be weighed in determining whether to grant a waiver. Here, it is clear that, when weighed against VPT's failure to make the required threshold showing that no fully spaced or less short-spaced sites are available and its failure to advance any other substantial public interest benefit that would derive from its short-spaced proposal, this factor does not justify the grant of its Waiver Request.

**COMMUNITY TELEVISION
OF SOUTHERN CALIFORNIA**

STATEMENT OF ROBERT L. HAMMETT, CONSULTING ENGINEER

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Community Television of Southern California ("Community"), applicant for a new non-commercial television broadcast station to operate on Channel *39 in Bakersfield, California, to study the Request for Waiver dated November 6, 1990, filed by Valley Public Television, Inc. ("Valley").

Valley seeks to amend its application for Channel *39 in Bakersfield, which is mutually exclusive with the pending application of Community Television of Southern California, to include a request for waiver of Sections 73.610 and 73.698 of the Commission's Rules. As detailed in the Engineering Statement of Hammett & Edison, Inc., dated October 18, 1990, the Valley proposal specified a transmitter site at Breckenridge Mountain that would be short-spaced to the Channel *25 allotment to Ridgecrest, California. The request for waiver recently filed by Valley offers as justification for waiver the following unsupported technical assertions:

1. Breckenridge Mountain is a unique antenna farm,
2. Valley would reach 421,000 persons with Grade B service as compared to Community's service to 332,293 persons,
3. There are some non-short-spaced sites available, but they are inferior to Breckenridge, and
4. Valley's proposed facilities would allow maximum coverage of the Bakersfield area.

Valley argues that locating a new television station at an established antenna farm is desirable to avoid receiving antenna orientation problems, to save costs, and to benefit the environment. We agree with the desirability of using an antenna farm but, as shown in this statement, another antenna farm is available and there is no necessity to use Breckenridge Mountain, for which Valley would require a waiver of the Rules.

ADEQUATE FULL-SPACED SITES ARE AVAILABLE

In 1988, Hammett & Edison, Inc., made studies of alternative transmitter locations as a fundamental part of preparing the engineering portion of the Community application for Channel *39 in Bakersfield, (see my engineering exhibit dated August 29, 1988). Engineering studies were made of several alternative transmitter locations. We rejected Breckenridge Mountain at that time because of the short-spacing which it would cause to the Channel *25

allotment in Ridgecrest, California. The transmitter site selected by Community on Mt. Adelaide, 24 kilometers east of Bakersfield, is in full compliance with the FCC Rules and is an existing antenna farm from which Bakersfield would be well served. There are two existing full-power television stations on Mt. Adelaide: KGET on Channel 17 and KDOB on Channel 45. It is, therefore, apparent that Breckenridge Mountain is not a unique antenna farm as claimed by Valley in its assertion No. 1 above.

Valley's Request for Waiver depends heavily upon an asserted superiority of coverage for its proposal, as compared with Community's proposal using Mt. Adelaide, which does not require a waiver of the spacing rules. The comparative coverage asserted by Valley is erroneous, being based on different assumptions for the two facilities. The 421,000 persons claimed by Valley were apparently based on the coverage map in its application, which stated that the population data were "updated by Kern County Board of Trade and Economic Development." The Valley data are not, therefore, based upon the latest Census as required by Section V-C of FCC Form 340. The data we supplied with our engineering statement for the Community application was based upon the latest available Census.

To obtain a valid comparison between the two proposals, a population count has now been made under my direction based upon the distances to the Grade B contour shown in the Valley application. I find that the population contained therein, according to the 1980 Census,

**COMMUNITY TELEVISION
OF SOUTHERN CALIFORNIA**

allotment in Ridgecrest, California. The transmitter site selected by Community on Mt. Adelaide, 24 kilometers east of Bakersfield, is in full compliance with the FCC Rules and is an existing antenna farm from which Bakersfield would be well served. There are two existing full-power television stations on Mt. Adelaide: KGET on Channel 17 and KDOB on Channel 45. It is, therefore, apparent that Breckenridge Mountain is not a unique antenna farm as claimed by Valley in its assertion No. 1 above.

VALLEY WOULD NOT SERVE SIGNIFICANTLY MORE PERSONS

Valley's Request for Waiver depends heavily upon an asserted superiority of coverage for its proposal, as compared with Community's proposal using Mt. Adelaide, which does not require a waiver of the spacing rules. The comparative coverage asserted by Valley is erroneous, being based on different assumptions for the two facilities. The 421,000 persons claimed by Valley were apparently based on the coverage map in its application, which stated that the population data were "updated by Kern County Board of Trade and Economic Development." The Valley data are not, therefore, based upon the latest Census as required by Section V-C of FCC Form 340. The data we supplied with our engineering statement for the Community application was based upon the latest available Census.

To obtain a valid comparison between the two proposals, a population count has now been made under my direction based upon the distances to the Grade B contour shown in the Valley application. I find that the population contained therein, according to the 1980 Census, is 338,673 persons. The population served was determined for both applications by summing the populations of all Census Enumeration Districts whose geographical centroids are located within the pertinent contours. In borderline cases, where coverage of a particular community was not clearly apparent, reference was made to the coverage maps on file.

As shown in the Community application, it would include 332,293 persons within its Grade B contour. The mutually exclusive proposals for Channel *39 thus include essentially the same number of persons within their Grade B contours, differing by only 1.9%.

The 1986 Census Update shows a growth in the pertinent area of 22% since the 1980 data. Studies using the updated figures show that the populations covered by the two proposals remain essentially equal.

To further illustrate the comparative coverage, the attached figure has been prepared showing, on the same map, the Grade B contours of each application. It is clearly evident that the Community proposal provides more extensive coverage of the southern San Joaquin Valley than does the Valley proposal. The Community Grade B contour reaches approximately 16 kilometers further west and includes Taft and the Census Designated Places of Ford City,

AFFIDAVIT

State of California)
) ss:
County of San Mateo)

Robert L. Hammett, being first duly sworn upon oath, deposes and says:

1. That he is a qualified Registered Professional Engineer, holds California Registration No. E-007601 which expires September 30, 1994, is also registered in the State of Texas and in the District of Columbia, and is a consultant to the firm of Hammett & Edison, Inc., Consulting Engineers, with offices located near the city of San Francisco, California,

2. That he graduated from Stanford University in 1942, received a Master of Arts Degree in Electrical Engineering from Stanford University in 1943, was a Research Associate at Radio Research Laboratory, Harvard University, from 1943 through 1945, and has practiced as a consulting engineer since 1946,

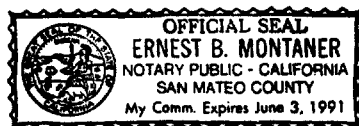
3. That the firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Community Television of Southern California, applicant for a new non-commercial television broadcast station to operate on Channel *39 in Bakersfield, California, to study the Request for Waiver dated November 6, 1990, filed by Valley Public Television, Inc.,

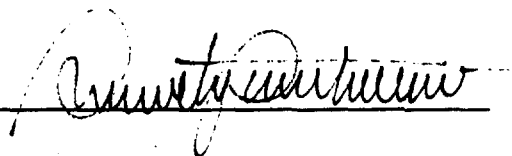
4. That such engineering work has been carried out by him or under his direction and that the results thereof are attached hereto and form a part of this affidavit, and

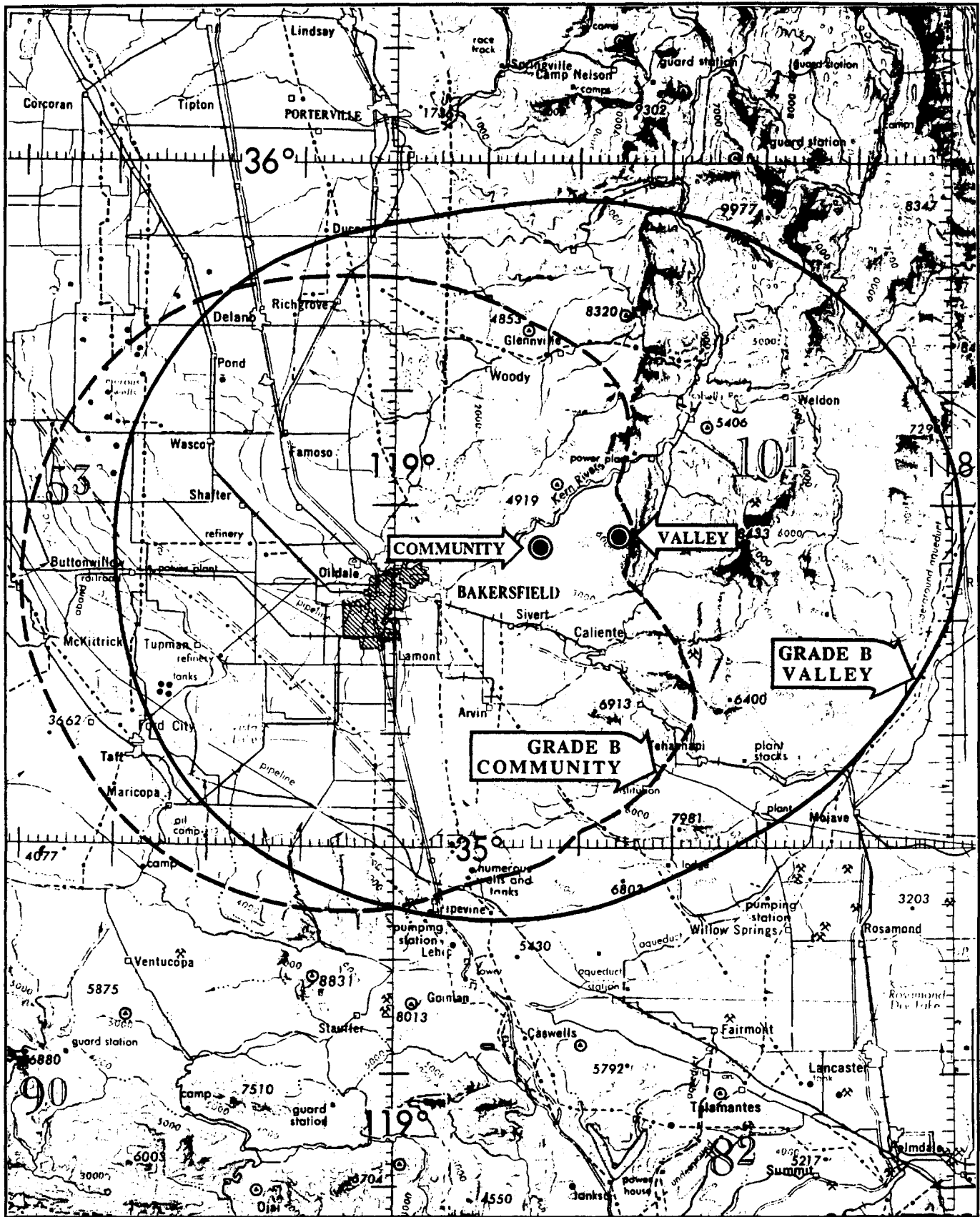
5. That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge except such statements made therein on information and belief, and as to such statements, he believes them to be true.


Robert L. Hammett, P.E.

Subscribed and sworn to before me this 27th day of November, 1990







10 MILES 0 10 20 30
10 KM 0 10 20 30 40 50

HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

COMMUNITY TELEVISION
OF SOUTHERN CALIFORNIA
BAKERSFIELD, CALIFORNIA

COMPARATIVE COVERAGES
FCC GRADE B CONTOURS
SHOWN IN PENDING APPLICATIONS

901120

FIGURE 1

CERTIFICATE OF SERVICE

I, La-Veta C. Waller hereby certify that I have on this 3rd day of December, 1990, caused copies of the foregoing "Opposition to Request for Waiver" to be served by first class U.S. mail, postage prepaid, upon the following:

Richard Hildreth, Esquire
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
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Clay Pendarvis, Esquire
Mass Media Bureau
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Washington, D.C. 20554


La-Veta C. Waller

*By Hand Delivery